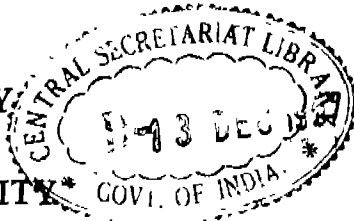


The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY



No. 580] NEW DELHI, WEDNESDAY, DECEMBER 11, 1957/AGRAHAYANA 20, 1879

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th December 1957/Agrahayana 16, 1879, Saka

S.R.O. 3914.—Where the election of Shri Shankar Deo Vedalankar as a member of the House of the People from the Gulbarga constituency of that House was called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri B. Shyam Sunder, resident of Devappa Building, Gazipura, Gulbarga;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition, has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Election Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION TRIBUNAL, GULBARGA

BEFORE SHRI R. HANMANTH RAO, MEMBER, ELECTION TRIBUNAL.

ELECTION PETITION No. 431 OF 1957

Petitioner.—Sri B. Shyam Sundar.

Vs.

Respondent.—Sri Shanker Deo Vedalankar and three others.

Gulbarga, the 15th October 1957

ORDER

Sri Mahboobul Hasan, Advocate for the petitioner present. Sri Venkat Rao Deshpande has appeared on behalf of Respondents 1 and 2. Respondent No. 3 was called. He and his pleader have not appeared today. Respondent No. 4 has been set *ex parte*.

On behalf of Sri B. Shyamsunder, petitioner, an application has been submitted for granting an adjournment on the ground that he was overwhelmingly pre-occupied with the important Assembly Session at Bangalore and could not possibly avail time to prepare the list of witnesses. He request that the delay in submitting the list be condoned and witnesses 1 to 13 in the enclosed list be summoned.

The provisions of the C.P.C. apply to the trial of an Election Petition. The discretion to adjourn a case has been conferred on the Court by Or. 17 Rule 1 C.P.C. The test to be applied for granting an adjournment is to see whether the party asking for the adjournment has shown sufficient cause for granting an adjournment. What is a sufficient cause has to be determined in view of the facts and the nature of each case. This is an Election Petition which is expected to be disposed of within six months from the date of the publication of the Election Petition in the Gazette. The issue in this case were framed on 27th August 1957 and I directed that the petitioner should submit the list of his witnesses within a fortnight and if necessary get summons issued for them. This order was made specifically on the understanding that the trial would commence today and it would continue to be heard day-to-day. In spite of this the Petitioner took no steps to help the progress of the trial of this petition for a period of more than a month and a half. The reason that the petitioner was pre-occupied with the important Assembly Session is, in my opinion, not a sufficient reason for granting an adjournment in Election Petition. In fact the Respondent too can claim his pre-occupation on the same ground. Besides pre-occupation in the Assembly Sessions there is no other reason shown in the application for the grant of an adjournment. No Affidavit has been enclosed to this application. A general statement of pre occupation is not enough but the specific facts which prevented the petitioner from submitting the statements of the witnesses must come in the record. In these circumstances I am constrained to observe that the petitioner not realising the importance of the trial of the Election Petition has been negligent in discharging his responsibility and so the application deserves to be rejected. I have come to this conclusion taking into consideration the date of the publication of the Election Petition in the Gazette, the time granted for submitting the list of witnesses, the long adjournment given for getting summons issued to the necessary witnesses and the non-mention of any specific reason which can fall under the category of sufficient cause as envisaged in Or 17 Rule 1 C.P.C.

I asked the learned Advocate for the petitioner as to whether he was prepared to argue on the material in record which consisted only of the pleadings of the parties. He states that as the issues framed have first to be proved by evidence, he is not in a position to advance any arguments in the case. The burden of prove of all the issues is on the petitioner. The issues framed in this case are as follows:—

1. Is Respondent No. 1 an Arya Samajist by creed, belief and profession and so not a member of a Scheduled Caste?

2. Has Respondent 1 used the corrupt practices as alleged in para (5) of the petition?

3. Did hundreds of voters return without voting at Ibrahimpanthi Polling Station because it was not open before 10 A.M. on the day of polling? If so did it cause great prejudice to the election prospects of the petitioner?

4. Were the Parliamentary and Assembly ballot boxes interchanged at the time of the poll at the Polling Station Karamalli?

5. Were the Ballot Boxes so arranged throughout the constituency that more than one ballot paper could be inserted at a time?

6. Was there an interchange of ballot papers intended for the Legislative Assembly and the House of the People at the Polling Station Hiroli?

7. If issues four to six are decided in the affirmative what is their effect on the election prospects of the petitioner?

8. To what relief the petitioner is entitled?

All the issues are decided against the petitioner and in favour of Respondent No. 1 as no evidence has been adduced in their support. In the result the Election Petition shall have to be dismissed. As Respondents 1 and 2 have appeared in this case and are present through their Advocates each of them is granted costs to the extent of Rs. 150 each. Respondent No. 3 is not entitled to costs as he has not appeared today.

ORDER

The Election Petition presented by Sri B. Shyamsunder Petitioner is dismissed. Respondents 1 and 2 be each paid a sum of Rs. 150 as costs. Respondent 3 and 4 need not be paid any costs.

(Sd.) R. HANMANTH RAO,

Member, Election Tribunal, Gulbarga.

(Sd.) SHANKER DEO.

(Sd.) V. B. DESHPANDE, ADVOCATE for Respondents Nos. 1 & 2.

(Sd.) MAHBOORBUL HASAN, ADVOCATE for the petitioner.

[No. 82/431/57/13230.]

A. KRISHNASWAMY AIYANGAR, Secy.

